IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8485 of 2000

HON'BLE MR.JUSTICE K.S.JHAVERI

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RAVJIBHAI KAKABHAI BHESJALIA

Versus

STATE OF GUJARAT

Appearance:
MR AS SUPEHIA for Petitioner No. 1
MR KP RAWAL, AGP, for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 14/07/2004

ORAL JUDGEMENT

1. By way of this petition the petitioner has sought a direction of this Court directing the respondents to pay all retiral benefits to the petitioner on the basis that he retired on 28.2.1997 at the age of 60 years.

2. The petitioner was originally recruited on 1.12.1959 as Kadia as a daily wager. He has continuously worked as daily wager and on 1.4.1987 he was absorbed as Workcharge Kadia in view of the award of the Labour Court, Rajkot. Since the petitioner was entitled to get

pension he approached the respondent authorities who turned down his request. Therefore the petitioner has filed this petition praying the aforesaid relief.

3. Originally the petitioner had confined his claim as if he had retired at the age of 58 years, but subsequently in view of Government Resolution dated 17th October 1988 wherein it is clarified that semi-skilled workman will retire at the age of 60, the petitioner amended the petition basing his claim as if he has retired on 28th February 1997.

4. Mr. Supehia, learned counsel for the petitioner submitted that the petitioner is entitled to pension for the period from 1.12.1959 to 28.2.1995 and the respondents have wrongly denied pension to the petitioner. He submitted that the services rendered as Rojamdar and Workcharge employee has to be clubbed together for computing the decision and that the petitioner has put in more than 36 years of service. Learned counsel pointed out that the petitioner was absorbed as Wokcharge employee on 1.4.1987 and therefore there was no reason for the respondents to deny the pensionary benefits to the petitioner.

5. Mr. K.P. Rawal, learned counsel for the respondents submitted that since the services rendered by the petitioner are less than ten years, as per Government Resolution dated 8.1.1976, he cannot be granted pensionary benefits. According to the said resolution it was resolved to extend the pension benefits to the workcharge employee only, and as the petitioner has worked as workcharge Kadia only for 7 years, his case cannot be considered for payment of pension. The Deputy Director of Pension and Provident Fund filed an affidavit wherein he has admitted that the petitioner was working as daily wager from 1.12.1959 till 31.3.1987 and from 1.4.1987 to 28.2.1995 he was working as workcharge Kadia. The Assistant Engineer, R&B Department, Sub-Division Gondal has also filed affidavit in reply which is not readable at all. Mr. Rawal pointed out that the contention raised therein is that as the petitioner has not completed 10 years of continuous service on workcharge establishment, he is not entitled for pension.

6. Mr. Supehia for the petitioner has relied upon an unreported judgement of this Court dated 27.8.1998 passed in Special Civil Application No.2836/98 wherein it is observed as under:

"A Division Bench of this Court (Coram: Hon'ble

C.J. and J.M. Panchal J.) in the case of Chhaganbhai Ranchhodbhai Rathod Vs. Deputy Executive Engineer & Ors., Letters Patent Appeal No.1495 of 1997 decided on 6.8.98, after considering the resolution dt.17th October 1988 in an identical situation has held that the appellant in that case who completed 240 days and was continuously in service for a period of more than ten years as rojamdar is entitled to the benefits of pension."

7. Learned counsel for the petitioner relied upon a decision of this Court in the case of Tribhovanbhai Jerambhai Vs. Dy. Executive Engineer, Sub Division, R & B. Department, reported in 1998 (2) GLR 1. In para 9 of the said decision it is held that once a daily rated workman is treated to be permanent under the resolution dated 17.10.1988, his entire continuous service from the date of entry until he retires including his services rendered prior to the date of his regularization is taken into consideration for the purpose of computing pension or making pension available to such retired employee. Therefore, the plea of the respondents that the services rendered by the petitioner prior to the period making him Workcharge Kadia cannot be accepted. Learned counsel for the respondent is unable to controvert this aspect.

8. In the result, the petition succeeds, and it is accordingly allowed. The respondents are directed to compute the pensionary benefits payable to the petitioner with effect from 1st March 1997 as if he has retired on 28th February 1997, on or before 31st October 2004. In case the payment is not made within the stipulated period as mentioned above, the respondents shall pay interest at the rate of 12% on the payment of arrears from 1st March 1997 and such amount shall be recovered from the concerned officer who has delayed the payment to the petitioner. Rule is made absolute to the aforesaid extent with no order as to costs.

9. Mr. K.P. Rawal shall forward a copy of this order to the concerned authority.

[K.S. JHAVERI, J.]

ar